IN THE SUPREME COURT OF THE
UNITED STATES

October Term, 1967

No. _____

WHEATLAND HILLS CORP.,
a Delaware Corporation,

Petitioner,

v.

MARGARET F. MORTON,

Respondent.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

APPENDIX A

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A. D. 1967
WEDNESDAY, OCTOBER 11, 1967

CASE NO. 36,596

DISTRICT COURT OF APPEAL, THIRD DISTRICT

WHEATLAND HILLS CORP., ETC.,
Petitioner,

vs.

MARGARET F. MORTON,
Respondent.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

A True Copy

TEST:
SID J. WHITE
Clerk Supreme Court.

CC: Hon. W. P. Carter
Hon. E. B. Leatherman
Messrs. Rosin & Abel
Messrs. Milledge & Horn
Messrs. Sibley, Giblin, Levenson & Ward
Hon. John R. Barrett; Hon. Maurice M. Diliberto

APPENDIX B

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA

THIRD DISTRICT

JANUARY TERM, A. D. 1967

CASE NO. 66-498

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND, IF FILED, DISPOSED OF.

WHEATLAND HILLS CORP.,
a Delaware corporation,
Appellant,

vs.

MARGARET F. MORTON,
Appellee.

Opinion filed: May 9, 1967.

An Appeal from the Circuit Court for Dade County, William A. Herin, Judge.

Rutledge & Milledge; Rosin & Abel (Sarasota), for appellant.

Sibley, Giblin, Levenson & Ward, for appellee.

Before HENDRY, C.J., and CHARLES CARROLL and SWANN, JJ.

PER CURIAM.

The Circuit Court for Sarasota County had the power to place an equitable lien upon property located in Dade County which property belonged to a non-resident and was specifically described in publication of notice as property being proceeded against in a divorce suit in order to be subjected to the satisfaction of the claim for alimony and child support. Having been shown no reversible error, the decree appealed is affirmed. State of Florida v. Jacksonville P. & M. R. R. Co., 16 Fla. 708,722 (1878); Klausner v. Ader, Fla.App. 1963, 156 So. 2d 193; Webb v. Webb, Fla.App.1963, 156 So.2d 698; Wesner v. O'Brien, 56 Kan. 724, 44 P. 1090 (1896); Benner v. Benner, 63 Ohio St. 220, 58 N.E. 569 (1900); Reed v. Reed, 121 Ohio St. 188, 167 N.E. 684. See Wagner v. Wagner, 293 F.2d 533,538 note 5 (D.C. Cir. 1961); Annotations 10 A.L.R.3d 212.

Affirmed.

APPENDIX C

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA, IN CHANCERY.

No. 64C 2201

(J. Herin)

WHEATLAND HILLS CORP.,
a Delaware Corporation,
Plaintiff,

vs.

MARGARET F. MORTON and TALMADGE A. BUCHANAN, As Sheriff of Dade County, Florida,
Defendants,

THE CHASE MANHATTAN BANK,
a Banking Corporation,
Petitioner,

RICHARD MORTON and EMIL MORTON,
Cross-Defendants.

CORRECTIVE FINAL DECREE

This cause came on to be heard after due notice on the Petition for Rehearing filed by The Chase Manhattan Bank; the Petition for Rehearing filed by Wheatland Hills Corp.; and the Motion for Clarification and Correction of Clerical Error filed by Margaret F. Morton; and

the Court having considered the same and having heard argument of counsel for the respective parties, and in all respects being fully advised in the premises, finds that there were certain clerical mistakes in the Final Decree and that certain phraseology in the Court's findings requires change. The Court thereupon enters the following as its Corrective Final Decree in this cause:

Richard and Margaret Morton, husband wife for fifteen years, the parents of two minor boys, and residents of Sarasota County, Florida, became involved in domestic relations proceedings. Margaret filed a suit against Richard on April 23, 1962, in the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida, which court had jurisdiction over the marital status. Richard fled the jurisdiction of the Florida courts and was never personally served with process in the divorce suit. In said cause Margaret filed a second amended complaint, seeking thereby, among other things, in addition to a divorce and custody of the children, a decree charging in equity Richard's title and ownership in the Morton Towers property located in Dade County, Florida, for the payment of alimony and support for her and the children. The legal description of said property is as follows:

> Lot 7 and the Southerly 1 foot of Lot 6 in Block 43 of Alton Beach Bay Front Subdivision, as per plat thereof, recorded in Plat Book 4, at page 125, public records of Dade County, Florida; said property lying and being in Dade County, Fla.

Richard was served by publication as required by law and the order of publication specifically described

the above property and gave Richard notice that Margaret's suit sought a decree charging it for support and alimony for herself and the children. A decree pro confesso having been rendered against Richard predicated upon said service, thereafter on September 9, 1963, a final decree was rendered, which, among other things, provided:

> "ORDERED, ADJUDGED AND DECREED as follows:
>
> 1) That the plaintiff, Margaret Morton, is hereby awarded permanent lump sum alimony and child support in the sum of FOUR HUNDRED FIFTY THOUSAND DOLLARS ($450,000.00), payable within ten (10) years in equal annual payments, which sum shall constitute a special equitable lien against the defendant Richard Morton's interests in the following described realty:
>
> Lot 7, plus the southerly 1.0 foot of Lot 6, Block 43, Alton Beach Bayfront Subdivision, according to the plat thereof recorded in Plat Book 4, at page 125, Public Records of Dade County, Florida, otherwise known and described as Morton Towers, Miami Beach, Florida;
>
> * * *
>
> 7) That all of the sums awarded and directed to be paid herein shall constitute a lien against Defendant's interest in the property described as:

Lot 7, plus the southerly 1.0 foot of Lot 6, Block 43, Alton Beach Bayfront Subdivision, according to the plat thereof recorded in Plat Book 4 at page 125, Public Records of Dade County, Florida, otherwise known and described as Morton Towers, Miami Beach, Florida;

* * *"

At the time the order of publication was rendered, and at the time Richard received actual notice of the filing of the Second Amended Complaint, he was the owner of an undivided eight per cent (8%) interest in the property above described. Thereafter, on October 4, 1962, Richard's father, Lawrence Morton, then and there holding a power of attorney from his son, conveyed Richard's interest and title in the above property to the plaintiff, Wheatland Hills Corp. The testimony indicates that this conveyance was made in order to protect the property from the effect of Margaret's suit and was prompted by the order of publication of the court in which notice was given that said property was being proceeded against.

The plaintiff, Wheatland Hills Corp., brought suit in the Eleventh Judicial Circuit in and for Dade County, Florida, seeking to quiet title to the property described in the final decree rendered as aforesaid, and sought to have this court strike it as a cloud on the plaintiff's title. Margaret, party defendant, answered and filed her cross-suit in which she seeks foreclosure of an an equitable lien imposed upon said property by the final decree.

Wheatland Hills Corp. is a corporation organized and existing under the laws of the State of Delaware.

Its three stockholders are Richard and his two brothers, each of whom owns an 8% interest in the real estate above described, and their interest in said real estate was conveyed to the plaintiff in exchange for all of its outstanding capital stock, one-third being issued to each of the sons. This was the only consideration given for the conveyance of the property.

An absconding father and husband, who avoids personal service by fleeing the jurisdiction of the courts of this State, leaving behind real property within the jurisdiction of this State, may thus escape personal liability for the payment of support and alimony to the deserted wife and children. Not so the property within the State; it remains subject to the processes of our courts and may be seized and sold to provide support for the abandoned wife and children.

The fleeing husband does not escape with his real property by the simple device of forming a corporation, after leaving the State, to which he conveys the title in exchange for the capital stock of the corporation. The courts of this State and their processes are not impotent in the face of this mockery. It is obvious that the courts of this State have the power to appropriate the absent husband's property to the payment of his obligation for the support of his wife and children, provided proper procedures are adopted to accomplish this end.

In *Pennoyer* v. *Neff*, 95 U.S. 714, 24 L. Ed. 565, it is pointed out by the Supreme Court of the United States, in speaking of the power of state courts, that "it is a legitimate just exercise of authority to hold and appropriate any property owned by such non-residents to sat-

isfy the claims of its citizens", and this may be accomplished by substituted service by publication "where the property is once brought under control of the court by seizure or some equivalent act".

Service by publication was accomplished in this cause and notice of the proceedings was received by Richard and the order requiring him to appear *specifically described the property against which Margaret was proceeding in said divorce suit*, giving to Richard full notice that it was the purpose of the suit to appropriate this property to the satisfaction and payment of the claims due her and her children for support.

In *Wesner* v. *O'Brien*, 56 Kan. 724, 44 P. 1090, the court said that the "seizure of land in such a case is little more than a form. The essential matter is that the defendant shall have legal notice of the proposed appropriation, and this is afforded by the publication notice, which *warns the defendant that one of the purposes of the proceeding is the sequestration of the land*". This principle is cited with approval by the District Court of Appeal of Florida, Third District, in the case of *Webb* v. *Webb*, (1963) 156 So. 2d 698, 701.

Again, in *Reed* v. *Reed*, 121 Ohio St. 188, 167 N.E. 684, it was pointed out that the husband was a nonresident over whom the court did not obtain jurisdiction. However, the court held that since the complaint and the published notice to the defendant husband contained a particular description of the land sought to be appropriated, such notice was equal to a sequestration of the land.

The amount awarded to Margaret, and the creation of a lien upon the property for the payment of the award,

are matters which are finally concluded in the proceedings in the Twelfth Judicial Circuit. This Court is bound by those adjudications.

The Court being duly advised in the premises, it is ORDERED, ADJUDGED AND DECREED as follows:

(a) That the equity of this cause is with the defendant and cross-claimant, Margaret Morton, and is against the plaintiff and cross-defendants, Wheatland Hills Corp., Richard Morton and Emil Morton.

(b) The Court finds and declares that Margaret Morton has a valid and subsisting equitable lien upon the following described property:

> Lot 7 and the Southerly 1 foot of Lot 6 in Block 43 of Alton Beach Bay Front Subdivision, as per plat thereof, recorded in Plat Book 4, at page 125, public records of Dade County, Florida, otherwise known and described as Morton Towers, Miami Beach, Florida,

for the total sum of $548,799.87, composed of the following items:

$450,000.00 awarded as permanent lump sum alimony and child support, payable within ten years in equal annual installments from September 9, 1963, of which $135,000.00 is past due, together with

$ 46,199.87, consisting of temporary arrearages, and
$ 45,000.00 attorneys' fees, and
$ 7,600.00 expert witnesses' fees,

making a total indebtedness past due of $233,799.87, and that the total sum of $548,799.87 constitutes and is a lien upon Richard Morton's 8% undivided interest in the above described property. This equitable lien in favor of Margaret Morton is subject to that certain assignment of rents and profits dated April 20, 1962, from Richard Morton to The Chase Manhattan Bank, and any sale provided for herein shall be subject to the rights of The Chase Manhattan Bank.

(c) The cross-defendant, Richard Morton, shall pay to the defendant and cross-claimant, Margaret Morton, forthwith, the amounts hereinabove recited as due, together with interest thereon from September 9, 1963 until paid, together with all costs of this suit taxed by the Clerk of this Court, Sheriff's fees, costs of publication, Special Master's fees, and all other costs of these proceedings.

(d) In default of said payment being made as hereinabove ordered, then the said undivided 8% interest in the above described property lying and being in Dade County, Florida, be sold at public auction for cash to the highest and best bidder at the south door of the County Courthouse in the City of Miami, Dade County, Florida, to satisfy this decree. Honorable Jack Abbott, Esquire, be and he is hereby designated and appointed as a Special Master of this Court to make and conduct said sale on a legal sale day during the legal hours of sale after first giving public notice of asle, time and place thereof, and causing said notice to be published once a week for four consecutive weeks in The Miami Review, a newspaper of general circulation published in Dade County, Florida,

and he is hereby authorized and directed to execute and carry into effect this decree.

(c) Out of the proceeds arising from the sale of the property herein ordered to be sold, the Master shall retain his fee and shall pay to the officials of the Court their costs herein, and shall pay to the attorneys for the cross-claimant, Margaret Morton, any attorneys' fees that may be hereinafter allowed in this cause; out of the remainder of said proceeds, as far as the same shall apply, there shall be paid to the cross-claimant, Margaret Morton, the sum of $233,799.87, with interest thereon from September 9, 1963 to the date of sale. If said property shall sell for more than enough to pay the cross-claimant the aforesaid sum now due to her with interest thereon, said Master shall report said overplus to this Court for this Court's order and the same shall thereupon be deposited in the Registry of the Clerk of this Court to be held as security for the balance due the cross-claimant, Margaret Morton, as hereinabove adjudicated.

(f) The plaintiff, Wheatland Hills corp., and cross-defendants, Richard Morton and Emil Morton, and all persons claiming by, through or under them since the commencement of this suit, shall be forever barred and foreclosed of any and all right, equity of redemption, claim, estate, or title in and to the above described property.

(g) Upon the execution and delivery of the Master's Deed to the purchaser at said sale, or his or its heirs, representatives, successors or assigns, he, it or they shall, without delay, be let into possession of the said premises so conveyed.

(h) The cross-claimant, Margaret Morton, shall be permitted to bid at the said Master's sale the total amount of the award made to her and, in the event she is the successful bidder, she shall only be required to pay the costs of court and Master's fee, the balance to be credited against the amount due or awarded to her as above set forth.

(i) The Court retains jurisdiction of this cause to render such orders and decrees as may be necessary to enforce the terms and conditions of this Corrective Final Decree.

DONE AND ORDERED in Chambers, at the Dade County Courthouse, Miami, Florida, this 19th day of April, 1966.

William A. Herin
Circuit Judge

APPENDIX D

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR SARASOTA COUNTY. IN CHANCERY.

No. 15,339

MARGARET MORTON,

Plaintiff,

vs.

RICHARD MORTON,

Defendant.

SUPPLEMENTAL FINAL DECREE

This cause coming on to be heard before me for final hearing upon Plaintiff's bill of complaint and the Decree Pro Confesso heretofore entered herein, and the Court having considered carefully the evidence and testimony submitted and adduced in the trial of this cause, finds that the equities are decidedly with the Plaintiff wife and that she is entitled to the relief accorded by this decree, and whereas this Court has by its decree entered September 4, 1963, ordered, adjudged and decreed as follows:

1) That this Court has jurisdiction of this cause, the subject matter hereof, the persons of the Plaintiff and the two minor children of the parties hereto and the

property of the Defendant described in the complaint and lis pendens herein, and all property of the Defendant situate in the State of Florida.

2) That the Defendant, Richard Morton, has been duly and regularly served with constructive service in this cause, and has actual notice of this cause.

3) That the Plaintiff, Margaret Morton, by competent evidence has sustained the allegations of her complaint and that the equities of said cause are with the Plaintiff and she is hereby granted a decree of divorce, a vinculo matrimonii, from the Defendant, and the bonds of matrimony heretofore existing between Margaret Morton and Richard Morton be forever dissolved.

4) That the care, custody and control of the minor children of the parties, BRUCE MORTON, age 14, and GREGG MORTON, age 12, is awarded unto the Plaintiff, Margaret Morton.

5) That this Court finds upon a full consideration of the evidence, testimony and pleadings herein, that the Plaintiff is entitled to permanent lump sum alimony, permanent child support, permanent attorneys' fees and suit costs, and this Court reserves jurisdiction of this cause to determine the specific amounts thereof; further, this cause is hereby referred to a Special Master in Chancery for the purpose of taking testimony and evidence in support of Plaintiff's claim therefor and to make his findings of fact, conclusions of law and recommendations in respect thereof to this Court with all convenient speed.

6) That this Court reserves jurisdiction of this cause for the purpose of enforcing the terms and conditions of this Decree and entering such orders herein as may be necessary.

And the Court having appointed a Special Master in Chancery for the purpose of taking testimony and making findings of fact, conclusions of law and recommendations with respect to lump sum permanent alimony, child support, attorneys' fees and Court costs, and said Special Master having filed his Special Master's Report before the Court, it is in consideration thereof, thereupon

ORDERED, ADJUDGED AND DECREED as follows:

1) That the plaintiff, Margaret Morton, is hereby awarded permanent lump sum alimony and child support in the sum of Four Hundred Fifty THOUSAND DOLLARS ($450,000.00); payable within ten (10) years in equal annual payments, which sum shall constitute a special equitable lien against the defendant Richard Morton's interests in the following described realty:

> Lot 7, plus the southerly 1.0 foot of Lot 6, Block 43, Alton Beach Bayfront Subdivision, according to the plat thereof recorded in Plat Book 4 at page 125, Public Records of Dade County, Florida, otherwise known and described as Morton Towers, Miami Beach, Florida;

TOGETHER with all other real and personal property of the Defendant of whatsoever nature located within the State of Florida; that the foregoing lump sum award

shall be allocated one-half (½) for the wife's alimony and one-half (½) for support of the minor children of the parties; that defendant's share in the mortgage debt on the above described property and other obligations of the Defendant were fully considered by this Court in making the foregoing determination of alimony and support; that the lump sum award in paragraph 1 hereof shall be payable in the sum of Forty Five THOUSAND DOLLARS ($45,000.00) per annum, commencing September 9, 1963, and a like sum of Forty Five THOUSAND DOLLARS ($45,000.00) on each successive 9th day of September hereafter until paid in full.

2) That the Plaintiff, Margaret Morton, is hereby awarded the residence property, together with the furniture and furnishings therein contained, located at 350 South Shore Drive, Sarasota, Florida, legally described as:

> Lot 15 and the westerly one-half (½) of Lot 16, a Resubdivision of Block "M", SAPPHIRE SHORES, as per plat thereof recorded in the Public Records of Sarasota County, Florida;

and this Decree shall be taken and considered in all courts of law or equity to have the same operation and effect as if a deed of conveyance had been executed by the Defendant, Richard Morton, who shall be conclusively deemed to have no interest whatsoever in said property, and the Plaintiff, Margaret Morton, shall be conclusively deemed to be the fee simple owner of said property. The equities of the parties therein have been fully computed and fully considered by the Court in making his deliberation and award.

3) That the Plaintiff is hereby awarded attorneys' fees in the sum of Forty Five THOUSAND DOLLARS ($45,000.00) for her attorneys of record in this cause. The foregoing sum shall be a lien upon the Defendant Richard Morton's interest in the property described in paragraph 1 of this Decree.

4) That the Plaintiff is hereby awarded court costs and expert witness fees in the sum of Seven Thousand Six Hundred DOLLARS ($7,600.00), which sum shall be a lien upon the Defendant Richard Morton's interest in the property descibed in paragraph 1 of this Decree.

5) That the Special Master's Report heretofore filed herein is hereby adopted, ratified and approved in every respect save and except the recommendations therein which are modified in accordance with this Decree.

6) That the Plaintiff is awarded the sum of Forty Six Thousand One Hundred Ninety Nine and 87/100 DOLLARS ($46,199.87), representing arrearages to date in unpaid temporary alimony, child support, attorneys' fees and Court costs, entered by this Court on November 9, 1962, which said sum shall be a lien upon Defendant Richard Morton's interest in the property described in Paragraph 1 of this Decree.

7) That all of the sums awarded and directed to be paid herein shall constitute a lien against Defendant's interest in the property described as:

Lot 7, plus the southerly 1.0 foot of Lot 6, Block 43, Alton Beach Bayfront Subdivision, according to the plat thereof recorded in Plat

Book 4 at page 125, Public Records of Dade County, Florida, otherwise known and described as Morton Towers, Miami Beach, Florida;

together with all other property of the Defendant located within the State of Florida and said property is hereby impressed with a lien for such purposes and to ensure the payment of the sums herein ordered to be paid, and said lien is hereby decreed to be a lien upon the assets of Defendant located within the State of Florida, for which let execution issue forthwith in accordance with this Decree.

8) That this Court reserves jurisdiction of this cause for the purpose of enforcing the terms and conditions of this Decree and entering such orders herein as may be necessary.

DONE AN DORDERED in Chambers at Sarasota, Sarasota County, Florida, this 9 day of September, 1963.

/s/ John D. Justice
Circuit Judge

APPENDIX E

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR SARASOTA COUNTY. IN CHANCERY.

Case No. 15,339

MARGARET F. MORTON,

Plaintiff,

vs.

RICHARD MORTON,

Defendant.

TEMPORARY RESTRAINING ORDER

THIS CAUSE came on to be heard upon presentation of the plaintiff's sworn petition to enforce this Court's prior decree awarding her $457,000 for child support, alimony, attorneys' fees, and suit money, and it appearing to the Court that the defendant, RICHARD MORTON, has engaged in certain maneuvers to frustrate such prior adjudication by attempting to divest himself of all of his interest in the income from rents and profits derived from the operation of the Morton Towers and of the real property upon which such improvement and business operation is constructed and conducted, which said real property is described as follows, to-wit:

Lot 7, and the Southerly 1 foot of Lot 6, Block 43, Alton Beach Bay Front Subdivision according to the plat thereof, recorded in Plat Book 4, at Page 125 of the Public Records of Dade County, Florida;

and it further appearing to the Court that WHEATLAND HILLS CORP., EMIL MORTON, as Trustee, LAWRENCE MORTON, ROBERT W. NEWMAN and JANICE NEWMAN ROSENTHAL, jointly and severally, having either participated in the maneuvers of RICHARD MORTON to frustrate this Court's prior adjudication, as stated above, or claim some interest, or have some control over the subject res, it is, thereupon,

ORDERED, ADJUDGED and DECREED:

1. That WHEATLAND HILLS CORP., EMIL MORTON, as Trustee, LAWRENCE MORTON, ROBERT W. NEWMAN, and JANICE NEWMAN ROSENTHAL be and they are hereby made parties defendant to this cause, and, they and each of them, shall be afforded notice and an opportunity to be heard in this cause and legal process in accordance with the laws of the State of Florida shall issue to that end.

2. That pending the adjudication of the rights of the parties in regard to the aforementioned sworn petition filed by the plaintiff to enforce this Court's prior adjudication awarding her the sum of $457,000 for child support, alimony, suit money and attorneys' fees, the parties are enjoined and restrained until further order of this Court from disposing of or in any way encumbering the above-described real property.

3. It is the purpose of this order to preserve the status quo and to take into custodia legis the above-described res which is within the jurisdiction of this Court pending the adjudication of the rights of all parties to this cause.

DONE and ORDERED at the Sarasota County Courthouse, Sarasota, Florida, on this 25 day of August, 1964.

/s/ John D. Justice
Circuit Judge

APPENDIX F

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT, IN AND FOR SARASOTA COUNTY, FLORIDA.
IN CHANCERY.

Case No. 15,339

MARGARET F. MORTON,
Plaintiff,

vs.

RICHARD MORTON, et al.,
Defendants.

ORDER

Some question having been raised regarding the clarity of a prior order of this Court, it is, thereupon,

ORDERED, ADJUDGED and DECREED that the temporary restraining order rendered by this Court on August 25, 1964, was entered to seize and bring into custodia legis all the interest, estate, and title to the real property described therein held or claimed by WHEATLAND HILLS CORP., acquired by it from RICHARD MORTON, the title to which was held by said RICHARD MORTON. This is and was the language intent and purpose of said temporary restraining order and is hereby so clarified.

DONE and ORDERED at the Sarasota County Courthouse, Sarasota, Florida, on this 5 day of Oct., 1964.

/s/ John D. Justice
Circuit Judge